(2)

No. 03-921

Supreme Court, U.S.
FILED
MAR 2 6 2004
OFFICE OF THE CLERK

In The

# Supreme Court of the United States

Evans Koukios, pro se

**Petitioner**

**v.**

Michael Ganson, L.P.A./Mr. Michael Ganson;
Graydon, Head and Ritchey, L.L.P/Mr. Harry J. Finke;
Cincinnati Bar Association /Mr. Edwin W. Patterson III

**Respondents**

**ON PETITION FOR WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT AND THE
HAMILTON COUNTY FIRST DISTRICT COURT OF APPEALS**

## PETITION FOR REHEARING FOR WRIT OF CERTIORARI

**Evans Koukios**
**Pro Se**
**4260 McNay Court**
**West Bloomfield**
**Michigan 48323**
**248-538-4588**

**Does the supremacy clause of the United States Constitution, Article VI, Sec. 2 and 3, impose a duty on states to regulate the conduct of their attorney bars to a standard, definable by the United States Constitution?**

**Does the supremacy clause of the United States Constitution, Article VI, Sec. 2 and 3, impose a duty on appellate courts, including the U.S. Supreme Court, with respect to mandatory jurisdiction to protect the U.S. Constitution and federal law?**

**Does the supremacy clause of the United States Constitution, Article VI, Sec. 2 and 3, protect the inalienable and U.S. constitutional right of self representation in the nation's courts?**

## PARTIES TO THE PROCEEDING

**Petitioner**

Evans Koukios, pro se

**Respondents**

Michael Ganson, L.P.A./Mr. Michael Ganson; Graydon, Head and Ritchey/Mr. Harry J. Finke;
Cincinnati Bar Association /Mr. Edwin W. Patterson III;

## APPENDIX FROM ORIGINAL PETITION FILED DECEMBER 23, 2003 AND APPENDIX AA

Appendix A: Order of First District Court of Appeals, April 2, 2003, page 1a.

Appendix B: Order of the Hamilton County Court of Common Pleas denying motion for findings of fact and vacation of order of December 17, 2001 and requiring bond of $106,002.64 and $39,103.08, entered January 16, 2002, page 6a.

Appendix C: Order of Hamilton County Court of Common Pleas entering for $19,551.54 for attorneys fees to Michael Ganson, L.P.A., entered December 20, 2001, page 8a.

Appendix D: Order of Hamilton County Court of Common Pleas entered order for $53,001.32 to GHR, LLP, entered December 20, 2001, page 9a.

Appendix E: Order Granting summary judgment with no reasons appearing in the grant, entered Nov. 2, 2001, page 11a.

Appendix F: Order Granting Motion to Dismiss with no reasons appearing in the grant, entered September 18, 2001.

Appendix G: Order Granting Motion to supplement motion for summary judgment after hearing for Civil Rule 56 motion, entered November 2, 2001, page 13a.

Appendix H: Filing made concurrently in the United States District Court, Southern District of Ohio, first page, of Fed.R.60(B) motion and Notice of the Removal from the Hamilton County Court of Common Pleas, filed with the Clerk of Hamilton County on November 20, 2001, page 14a.

Appendix I: Sua sponte order finding frivolous conduct, entered Nov. 2, 2001, page 16a.

Appendix J: Order of the Hamilton County First District Court of Appeals entered March 21, 2001, decision with regard to first appeal, page 18a, dismissing CBA on basis of res judicata and reversing dismissal of Ganson.

Appendix K: Order denying motions to compel and motion for defendants to answer the complaint, entered August 14, 2001, page 22a.

Appendix L: Entry of Disqualification of Judge Mark Schweikert for reason of membership in the Cincinnati Bar Association, September 10, 1999, page 26a.

Appendix M: Entry of decision of Chief Justice of Ohio Supreme Court on bias and prejudice of Judges of the First District Court of Appeals, entered October 17, 2000, in first appellate case. Page 28a.

Appendix N: Entry of decision of Chief Justice of Ohio Supreme Court on bias and prejudice of Judge Robert Ruehlman, entered July 19th, 2001, page 30a.

Appendix M: Entry of dismissals on basis of Civ.R. 12(b)(6) for res judicata from previous federal dismissals, entered June 22, 2000.

Appendix P: Order of U.S. Sixth Circuit Court of Appeals, October 12, 2000, from federal action.

Appendix Q: Order of U.S. Sixth Circuit Court of Appeals, August 11, 2000, opinion from federal action, page 36a.

Appendix R: Order and opinion of U.S. Sixth Circuit Court of Appeals on appeal of Fed.R. 60(b) and remand order of the district court on March 4, 2002, entered November 4, 2002, page 42a, and award of attorneys fees to CBA, that was subsequently never enforced.

Appendix S: Order of U.S. Sixth Circuit Court, en banc, denying review, entered March 24, 2003.

Appendix T: Order of Ohio Supreme Court denying stay of judgment entry of Hamilton County First District Court of Appeals, entered June 11, 2003, page 47a.

Appendix U: Order of Ohio Supreme Court denying discretionary review, finding no substantial constitutional question, entered July 30, 2003, page 48a.

Appendix V: Order of Ohio Supreme Court denying motion to reconsider, filed September 24, 2003, page 49a.

Appendix W: Order of U.S. Magistrate Judge, filed June 10, 1998 in federal action but filed in state court action by defendant Ganson and incorporated in order of trial court granting res judicata. Page 50a.

Appendix X: Order of U.S. District Court judge, filed by CBA in state court action, and incorporated in trial court's 12(b)(6) dismissal on basis of res judicata, entered March 17, 1999, page 72a.

Appendix Z: Transcript of Dec. 17, 2001 proceeding in the state court before Judge Robert Ruehlman, who proceeded in the state court with Ganson, GHR and CBA, despite removal and appearance of counsels for these defendants in U.S. District Court to file for order of remand that was not issued until March 4, 2002, said order being appealed to the U.S. Sixth Circuit Court of Appeals. Page 89a.

Appendix AA: *Christina Hood v. Prime Time Rentals, Inc.*, Appeal No. 01A01-9807-CH-352

## OPINIONS BELOW

The order of the First District Court of Appeals of Hamilton County Ohio, entered April 2, 2003, printed in Appendix A, that is the final court in the state to enter an order on the record of this case.

The orders of the lower trial court are printed in the Appendix, as well as the orders of the Ohio Supreme Court with respect to its rulings of bias and prejudice entered in the case, as well as federal opinions incorporated by the trial court in its initial rulings of the res judicata effect of a prior federal court action in the United States District Court, Western Region of Ohio and the decisions of the U.S. Sixth Circuit Court of Appeals.

## JURISDICTION

The order denying discretionary review was entered by the Ohio Supreme Court on July 30, 2003 (App. U) from the judgment of the Hamilton County First District Court of Appeals entered on April 2, 2003 (App. A). A motion for rehearing was timely filed with the Ohio Supreme Court, which motion was denied on September 24, 2003 (App. V). Petitioner states that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257, to review this petition for certiorari.

Petitioner further states that 28 U.S.C #1291 and 28 U.S.C. #1447(d), that incorporates section 1443 of the U.S. Code providing that "...an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise", is additionally applicable to the instant appeal.

Petitioner filed a Petition for Writ of Certiorari on December 23, 2003. On January 7, 2004, respondents Cincinnati Bar Association, et al. filed a waiver of right to respond by Felix J. Gora. On January 13, 2004, respondents Graydon Head, et al. filed a waiver of right to respond by Karen T. Dunlevey. On January 14, 2004, respondents Michael Ganson L.P.A. et al. filed a waiver of right to respond by David S. Lockemeyer. On February 11 2004 the petition was distributed for Conference of February 27, 2004 and on March 1, 2004 the petition for writ was denied.

Supreme Court Rule 44(2), Rehearing, provides jurisdiction for the rehearing of an order denying a petition for a writ of certiorari if filed within 25 days after the date of the order of denial. Grounds for rehearing shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with

certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified and is presented in good faith and not for delay.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. Constitution, Article VI, Sec. 2 and 3 :

This Constitution, and the Law of the United States which shall be made in Pursuance thereof; ...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding...and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution....

## TABLE OF AUTHORITIES

*Ceramco, Inc. v. Lee Pharmaceuticals* , 510 F.2d 268, 271 (2d Cir. 1975), p. 4

*Cheney v. U.S. District Court for the District of Columbia*, 03-475, p. 5

*Columbus Bar Assn. v. Elsass* (1999), 86 Ohio St.3d 195, p. 6

*Christina Hood v. Prime Time Rentals, Inc.*, Appeal No. 01A01-9807-CH-352, Tennesee Court of Appeals, page 2

*Faretta v. California* , 422 U.S. 806 (1975), p. 6
*Fogerty v. Fantasy*, Inc., 510 U.S. 517 (1994), p. 4

*Hecht v. Levin* (1993), 66 Ohio St.3d 458, p. 6

*In re Integration of the Nebraska State Bar Assn.* (1937) 133 Neb. 283, p. 4

*Magnum Import Co. v. Coty*, 262 U.S. 159, p. 3

*Mansfield, Coldwater & Lake Michigan Railway Company & Another v. Swan & Another*. 111 U.S. 379, p. 2

*Musicus v. Westinghouse Elec. Corp.* , 621 F.2d 742, 744 (5th Cir. 1980), p. 4

*Peaseley v. Virginia Iron, Coal & Coke Co.*, 282 N.C. 585, 194 S. E. 2d 133 (1973), page 3

*Ross v. Moffitt*, 417 U.S. 600 (1974), p. 2

Supreme Court Rule 15, page 1
U.S. Constitution, Article VI, Sec. 2 and 3, p. 1-10
U.S. Constitution, PREAMBLE, page 2.
*Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886), p. 8

## ARGUMENT

Art. VI, Sec. 2 and 3 reads in part: "This Constitution, and the Law of the United States which shall be made in Pursuance thereof; ...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...." This is given effect by appellate courts and every case presenting to a higher court with supremacy problems must be conformed. Discretionary criteria for appellate jurisdiction are not relevant when such problems exist.

The state trial court was never bound as constitutionally required. The description of facts, argument and record presented in Petitioner's Writ for Certiorari is accurate. Respondents filed waivers under Rule 15. There are no misstatements of fact or law and the record describes an abject failure of due process in every level of both federal and state court administration inferior to the U.S. Supreme Court. That courts produce irrational judgments is evidence that a constitutionally inadequate system exists for regulating the conduct of attorneys that violates principles of rationality. Justice cannot be found without truth and truth cannot be found without rationality. The framers of the constitution were not irrational.

The record describes a period of thirteen years beginning with a breach of a constitutional agreement by Ohio attorney Ganson to deny Petitioner access to the courts of Ohio. It culminates with on-going retaliation against the Petitioner by the seizure of his house by his own attorneys, GH&R. As either Ganson or GH&R or both are liable for Petitioner's damages, recovery is required in the action. The presence of the third defendant, the Cincinnati Bar Association, awarded immunity from requiring rationality in the conduct of attorneys shows why only irrational judgments emanate from court process additionally flawed by invidious discrimination based on Petitioner's U.S. constitutional right to represent himself. Appellate integrity is absent with harassment during appeals, the pro se appellant will not be

given regular calendar review, and constitutional issues raised in his appellate briefs are never mentioned in any court decision, including the constitutional issue of pro se representation raised in the complaint.

Finally, Petitioner removed the collateral jurisdiction of sanctions to the U.S. District Court, only to have Ohio's bar and appellate courts brutally injure Koukios and his family during the pendancy of appeals. Where jurisdiction did not exist, the appellate court should have announced the fact and dismissed the lower court's unauthorized process. See *Mansfield, Coldwater & Lake Michigan Railway Company & Another v. Swan & Another*. 111 U.S. 379. Ohio conflicts with every other state in the union. See *Christina Hood v. Prime Time Rentals, Inc.*, Appeal No. 01A01-9807-CH-352, Appendix AA.

Art. VI requires that "all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution....". This clause shows the second appearance of the word "bound" and uses the word "all". It necessarily includes the judges of the U.S. Supreme Court. Finding constitutional need for promissory oaths, the Act of Congress of 1789 began regulating the time and manner of administering oaths. Public trust required "all" to "solemnly swear or affirm" to "truly and faithfully" discharge their duties of office, "to the best of their knowledge and abilities", to "support the constitution". Federal judges had to swear the "obligation freely, without any mental reservations or purpose of evasion." The framers of the constitution mandated a public conscience and moral obligation to abide by an ethical code of conduct as the PREAMBLE had high purpose: "We, the people of the United States, in order to form a more perfect Union, establish justice... and secure the blessings of liberty to ourselves and our posterity..." This starting point requires certiorari in the U.S. Supreme Court.

Moreover, in the context of Art. VI, Supreme Court decisions like *Ross v. Moffitt*, 417 U.S. 600 (1974) are in

conflict and the principles in their dissents must be revisited. The majority believed that second-tier, discretionary appellate review could be meaningfully handled pro se. This they reasoned was even true when the state Supreme Court believed the decision of the Court of Appeals was incorrect, citing *Peaseley v. Virginia Iron, Coal & Coke Co.*, 282 N.C. 585, 194 S. E. 2d 133 (1973). This analysis is in error. The only proper function of appellate courts is to conform decisions to the constitution and the law. Art. VI.

The doctrine of Art. VI. protects for "due process" fairness between the State and the litigant, and "equal protection" fairness that corrects disparity in treatment by the State and the dissent in Moffit concludes that an adequate appellate review does not exist when "permissive" review is available but a litigant cannot adequately take advantage of such review. It cites to *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 and its criteria for U.S. certiorari, "first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort." The dissent noted, however, that:

> "`Certiorari proceedings constitute a highly specialized aspect of appellate work. The factors which [a court] deems important in connection with deciding whether to grant certiorari are certainly not within the normal knowledge of an indigent appellant. Boskey, The Right to Counsel in Appellate Proceedings, 45 Minn. L. Rev. 783, 797 (1961) (footnote omitted).'" 483 F.2d, at 653.

The ordinary knowledge of citizens is that appellate courts correct lower courts. Art. VI speaks to no discretionary criteria, special knowledge nor duty upon appellants to present argument on matters outside of their knowledge. To lay citizens, judges are always be bound and it is the failure to apply this doctrine that leads to crowded dockets. If there was absolute integrity in society there would be no law suits, absolute integrity at the trial level no

appeals, and absolute integrity at the first tier appellate level, no discretionary appeals.

Respondents, therefore, cannot be drenched in the appearance of impropriety for they, too, hold public trust. There is a difference between civil procedure and the misconduct of attorney-bar brutality. If Respondents were required to file a responsive brief **or** their counsels were ordered to show cause why they should not be disciplined, the responses would be identical and lead to disqualification. "An attorney owes his first duty to the court. He assumed his obligations toward it before he ever had a client. His oath requires him to be absolutely honest even though his client's interests may seem to require a contrary course. The[lawyer] cannot serve two masters; and the one [he has] undertaken to serve primarily is the court." *In re Integration of the Nebraska State Bar Assn.* (1937) 133 Neb. 283, 289.

Whereas a reasoned discussion of federal court attorneys fees occurs in *Fogerty v. Fantasy*, Inc., 510 U.S. 517 (1994), there is no reasoned analysis, nor can there be, for the award of the Respondents' federal court attorneys fees by a judge in a foreign state court. Following removal, Respondents had the opportunity to present their invoices to the U.S. District Court and assessed as in *Fogerty*, *ibid.* To appear ex parte, however, in a state courthouse when its Clerk had been ordered by federal law not to proceed is violate and oath and the dignity of the courthouse.

Both state and federal systems denied motions to disqualify these dastardly counsels. On principles of Art. VI, the public trust was being violated and disqualification should have been immediate and the penalties severe in both court systems. A trial judge is required to take measures against unethical conduct occurring in connection with any proceeding before him. *Musicus v. Westinghouse Elec. Corp.* , 621 F.2d 742, 744 (5th Cir. 1980). It is his duty and responsibility to disqualify counsel for unethical conduct prejudicial to counsel's adversary. *Ceramco, Inc. v. Lee Pharmaceuticals* , 510 F.2d 268, 271 (2d Cir. 1975) and no

undisciplined attorney should have passed to higher appellate levels to disrupt the dignity of those processes. All judges in all courts must be bound to the U.S. Constitution, including courts of last resort. Art. VI, U.S. Constitution.

The law clerks and justices will note that since the filing of Petitioner's petition, many events show a changing climate for deciding certiorari. First, this court granted certiorari in *Cheney v. U.S. District Court for the District of Columbia*, 03-475, on Dec. 15, 2003, briefs of Respondents and Amici were filed in March, 2004, and a Memorandum of Justice Scalia was filed March 18, 2004. Certiorari was granted on a discovery dispute where the Vice President seeks a grant of immunity from the judicial process of discovery. Petitioner adopts by reference the Respondent and Amici filings in that case as Petitioner has the same issues in his appeal.

Under equal protection, Petitioner should be entitled to the same certiorari of his discovery issues that center on public trust violations. Art. VI. The state court judge stated his discriminatory reasons for providing discovery immunity to Respondents, members of a class of legal professionals:

MR. KOUKIOS: Can you state why the motion to compel is being denied? There is a motion to compel against Graydon, Head & Ritchey, and there is no motion to dismiss.
THE COURT: Right. Motion to compel is overruled because, basically, you don't know what the heck you're doing, that's the real reason. You know, you're not a lawyer. You don't know what you're doing. You're filing ridiculous motions, and that's what happens when you try to represent yourself. But I am not going to teach you how to be a lawyer or teach you how to practice law. So that's it, next case.

In Justice Scalia's March 18, 2004 Memorandum, friendships and relationships are disclosed between members of the Court and private and official capacity defendants, including lawyers practicing before this Court. Under certain circumstances recusal is required and the basis is Art. VI. In

Petitioner's case, there are a multitude of friendships and relationships between the judges and the Respondent parties and their counsels. In fact, the first judges assigned in both the federal and state court complaints recused because of their membership in the Cincinnati Bar Association.

Certiorari itself can be errantly based on these prejudicial factors having to do with relationships and not just on the substance of legal questions. The Ohio Supreme Court prejudicially failed to review Petitioner's case, the U.S. Sixth Circuit Court of Appeals and the Hamilton County Court of Appeals entered non-publishable opinions with little analysis, and prejudicial factors against certiorari can exist in the U.S. Supreme Court. It is unconstitutional to deny certiorari because of a prejudiced view that extension of *Faretta v. California* , 422 U.S. 806 (1975) to civil cases is not to the liking of Supreme Court justices. The Supreme Court can't ignore "constitutional avoidance" in the Cheney case and ignore the real "constitutional avoidance" in Petitioner's case, because of prejudices that cannot be overcome by real biases and prejudices in the Court.

There has been a de-humanizing effect against Petitioner from years of abusive procedure against this civil rights plaintiff by the legal profession that cannot even be described in his petitions. *Columbus Bar Assn. v. Elsass* (1999), 86 Ohio St.3d 195 and *Hecht v. Levin* (1993), 66 Ohio St.3d 458 shows the prejudice problem in greater detail. In *Hecht*, the Ohio Supreme Court determined that a citizen who files an attorney grievance has an absolute privilege against a civil action against him based on that filing. Petitioner should be in the same position and have protection of immunity. In *Columbus Bar Assn. v. Elsass*, the Ohio Supreme Court found that a lawsuit filed by Elsass against a grievant "was unwarranted and harassing, and that his conduct violated DR 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice), 7-102(A)(1) (filing a suit, asserting a position, or taking action knowing

that such action would serve merely to harass or maliciously injure another)". Petitioner has been maliciously injured.

But the dissent in *Hecht*, *Id.* was written by Judge Pfeifer who currently sits on the Ohio Supreme Court who wrote: "In the business of practicing law, reputation is a successful attorney's greatest asset. To leave something of such value open to the prey of the malicious makes little sense." This prejudice is concealed but lurks so strong that is revealed by judicial infliction of injury. Petitioner is not even allowed to protect his good name from subsequent defamation. Ms. Dunlevey, who has appeared in this Court, aptly shows in her well-received argument to the prejudiced judges of the First District Court of Appeals:

> Furthermore, the Appellant's suggestion that the reproduction of the Court's Judgment Entry on the Internet has damaged his health, caused serious emotional distress to him and his family, has inflicted irreparable damage and is an example of "bar brutality" is nothing short of absurd. Koukios has voluntarily pursued this litigation for approximately nine years, filing literally hundreds of motions on non-issues such as the one currently before this Court. To the extent that any abuse of the system has occurred, we submit that Koukios is the abuser, as opposed to the victim.

The record contains no frivolous motions on non-issues and Ms. Dunlevey does not have truth as a defense to her defamation. Her statement is hocus-pocus, "to cheat or take surreptitiously" this litigant's good name, and is unbecoming conduct for a member of this Court's bar. The invidious discrimination has turned ugly. It is not the Cincinnati Bar Association and other official Respondents that are immune from suit and discovery, but Petitioner who has demonstrated that the administration of a law is "directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive" that the system of prosecution

amounts to "a practical denial" of equal protection of the law. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886).

Second, Martha Stewart was convicted March 5, 2004 as felon in a U.S. District Court. Securities defense lawyers advised the public that citizens should not speak with government attorneys. Stewart's lawyers said they would appeal to explain where the case went wrong, but it was reported Ms. Stewart will likely serve her sentence before her appeal of right is determined. In a written decision in the case, U.S. District Court Judge Cederbaum dismissed a count of the indictment carrying a 10 year prison term because government attorneys did not produce sufficient evidence for the count to go to jury, a ruling akin to a Civil Rule 11 violation found after trial. Stewart's publicly traded company suffers tremendous economic damage. The central issue of the case focus on a 28 year old assistant stockbroker, working in his professional capacity for Merrill Lynch, who failed to apply principles of professional ethics. Rosie O'Donnell issued a statement saying, "I am outraged and beside myself. This is a travesty. Shame on the federal government."

In connection to this widely publicized legal event, the U.S. Supreme Court is a branch of the federal government responsible for every inferior court decision in the nation. It is also responsible for the professional conduct of the nation's judges and lawyers. Art. VI. Reported in Boston University Community's Weekly Newpaper, Week of 19 March 2004 · Vol. VII, No. 24,www.bu.edu/bridge:

> The March issue of The American Lawyer says that law professors at Harvard, New York University, and other schools blame their schools' lack of response to Enron and other corporate scandals on the tradition of downplaying professional responsibility and other practice-oriented courses. "Law schools don't pay any attention to [legal] ethics," says Susan Koniak, a LAW professor of law instruction in the J. D. Program.

Ethics is important to the country and the Supreme Court can take jurisdiction of this issue in this record. The Cincinnati Bar Association and professional attorneys are defendants, and the Court can fully study and air the professional ethics questions of Ohio's bar. Many citizens agree with Rosie O'Donnell that the proper operation of the law does not always occur to protect citizen rights.

In fact, talking to personnel at the Supreme Court, Petitioner learned that many state supreme courts send reports to this Court so that disciplined attorney names can be checked against a master list of members of the Supreme Court's bar to ascertain whether membership should be revoked. The state courts reports are then **shredded**. It is not reasonable for public records, capable of being analyzed for guidance in improving court functioning, to be **shredded** by the most important supervisory body in the country. Even its master list of member attorneys is not a public record, despite its potential to assist those in need of obtaining the best petitions for getting a grant of certiorari. Where the Supreme Court is constitutionally mandated by Art. VI to take certiorari, it appears to be doing that which defeats it. The need for certiorari in Petitioner's case is shown by the Court's own conduct.

A third event to consider is described in a March 18, 2004 article following Mayor Gavin Newsom's issuance of same-sex marriage licenses in San Francisco:

(AgapePress) - U.S. Supreme Court Justice Antonin Scalia says issues of homosexual marriage will likely end up before the highest court in the land...In an address to a crowd of several hundred at the College of William & Mary in Virginia, Scalia said the court will likely have to determine whether laws in one state must be recognized in another state.

The issue, however, is playing out under Art. VI www.bu.edu/bridge, id:

Supporting gay marriages may be a smart move for certain politicians, says Jack Beermann, a LAW professor of law instruction, J. D. Program, but it is still unusual for government officials to defy the law to influence social change. "There is a respectable view that government officials should not engage in civil disobedience, that they should resign if they feel that the law is so unjust that they shouldn't follow it," says Beermann. "But I think the motivation of some of these officials is that they also take an oath to uphold the Constitution, and the Constitution is the supreme law of the land. They feel . . . their higher duty is to the Constitution."

Thus, rehearing with Art. VI at the forefront of Supreme Court consideration is more relevant to citizens of the country and jurisprudence itself.

## CONCLUSION AND CERTIFICATE OF GOOD FAITH

At an earlier time, the Taney Court was not able to handle the societal concerns in the Dred Scott case, and Congress and the people found the 12th, 13th and 14th amendments to the Constitution. Indeed, President Lincoln appointed Salmon P. Chase Chief Justice to carry forth this constitutional mandate, earlier expressed by Lincoln in the Emancipation Proclamation. The American spirit is traced to inalienable rights and equality, and citizens like Benjamin Franklin who, though himself not a lawyer, signed both the Declaration of Independence and the U.S. Constitution. Certiorari should be granted for final determination on the good grounds of this Petition to protect the Constitution.

Petitioner Evans Koukios further certifies that on this 26th day of March, 2004, I have served by U.S. Mail copies of this good faith Petition for Rehearing, restricted to the grounds in S.C. Rule 44(2), on all opposing counsel who have appeared in this action, and have no purpose of delay, but only purpose of certiorari in the U.S. Supreme Court.

/s/_____
Evans Koukios, Pro Se

**APPENDIX AA**

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

CHRISTINA HOOD
Plaintiff/Appellant, v.

Davidson Chancery
PRIME TIME RENTALS, INC.,
Defendant/Appellee.

No. 98-1611-I
Appeal No.01A01-9807-CH-352

APPEAL FROM THE CHANCERY COURT FOR
DAVIDSON COUNTY AT NASHVILLE, TENNESSEE
THE HONORABLE CLAUDIA BONNYMAN,
SPECIAL CHANCELLOR PRESIDING

RICHARD J. BRAUN
501 UNION STREET
SUITE 500
NASHVILLE, TENNESSEE 37219
ATTORNEY FOR PLAINTIFF/APPELLANT

JACK, LYON & JONES
PHILLIP K. LYON
BRUCE H. PHILLIPS
11 MUSIC CIRCLE SOUTH, SUITE 202
NASHVILLE, TENNESSEE 37203
ATTORNEYS FOR DEFENDANT/APPELLEE

REVERSED AND REMANDED
PATRICIA J. COTTRELL, JUDGE
CONCUR: CANTRELL, J.,KOCH, J.

**FILED**
**March 31, 1999**
**Cecil Crowson, Jr.**
**Appellate Court Clerk**

Footnote 1. Appellee, Defendant below, has filed with this Court a "Notice of No Opposition to Appeal" in which Appellee states it has no opposition to the relief sought by Appellant.

OPINION

The Plaintiff, Christina Hood, appeals the dismissal of her complaint and the imposition of court costs in state court, following the removal of her suit to federal court by the Defendant. In this appeal Plaintiff asserts that, under 28 U.S.C. §1446(d), once a case is removed to federal court, state court has no authority to dismiss a case or assess costs, unless and until the case is remanded. We agree.

Plaintiff filed a complaint in Davidson County Chancery Court against her former employer, Prime Time Rentals Inc. On June 26, 1998, Defendant filed a Notice of Removal and removed this action to the United States District Court for the Middle District of Tennessee. On June 29, 1998, the state trial court entered an order dismissing this action and assessing costs against the Plaintiff. Plaintiff now appeals claiming that the state court lacks authority to enter such an order. In the alternative Plaintiff claims that her constitutional rights to due process and equal protection have been violated.

Plaintiff's contention that the state court may not dismiss her claim and assess costs once removal has been effected is based on 28 U.S.C. §1446(d) which provides:

Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded.** Id. (emphasis added)

Federal courts have consistently held that the removal of an action to federal court divests the state court of jurisdiction to take further action. Pursuant to § 1446, "it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230, 1239 (9th Cir. 1994); Moore v. Interstate Fire Insurance, 717 F.Supp.1193 (S.D. Miss 1989); South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971). "Any further proceeding in the state court in the removed action, unless and until the case is remanded, would be a nullity." 1A Moore's Federal Practice § 0.168[3-8-4]. See also, Caldwell v. Montgomery Ward and Co., 207 F.Supp. 161 (S.D. Texas 1962).

The courts of other states have also interpreted Section 1446(d) to divest a state court of jurisdiction to proceed further upon the filing of a petition for removal. Pacific Spruce Corporation v. City of Yachats, 952 P.2d 575 (Or.App. 1998); Preston v. Allstate Insurance Company, 627 So.2d 1322 ( Fla. Dist. Ct. App. 1993); Sugimoto v. Exportadora De Sal, 284 Cal Rptr. 275 (Cal. Ct.App. 1991); Meyerland Co. v. Federal Deposit Insurance Co., 848 S.W.2d 82 (Texas 1993).

In a well reasoned, but unreported, opinion, this Court addressed a similar issue in Bolivar Sand Co. v. Allied Equipment Inc., 1987 WL 9375 (Tenn. App. April 13, 1987). In Bolivar the Defendant removed the case to federal court

following the trial court's denial of the Defendant's motion for directed verdict. After the filing of the removal petition, the trial court continued to hear the case in state court. The federal court eventually denied the Defendant's petition for removal and remanded the case back to state court. Thus, the question presented in Bolivar Sand Co. was whether the intervening actions by the state court were valid. This Court first determined that it was error for the trial court to proceed with adjudicating the case after removal was effected, holding:

The express language of § 1446(e) [sic] and its case law progeny reveal that once the removal is effected the state court will automatically be divested of jurisdiction and the federal court will then have the sole jurisdiction for determining the merits of the removal. The state court cannot proceed further "unless and until the case is remanded." Id. at *5

This Court then examined the effect of the federal court's later remand to state court. This Court determined that while earlier law allowed the state court to retain jurisdiction should the federal court remand for want of jurisdiction, § 1446 clearly provides that removal is effected upon completion of the procedural steps specified therein, irrespective of the ultimate determination on removability. Relying on a thorough examination of cases from other states and from federal courts, this Court held that the federal court's decision to remand did not validate the state trial court proceedings which took place between removal to and remand from the federal court. Most importantly for the instant appeal, this court held that the state court was without jurisdiction to proceed further once the action was removed. Based upon Bolivar Sand Co., and our review of cases from other jurisdictions, we are of the opinion there can be no question that a state court can proceed no further when a case is removed to federal court, unless and until the case is

remanded. The only remaining question is whether by dismissing the action and taxing costs, a state court has "proceeded" further. Other state courts have adopted the position that a dismissal is a proceeding under section 1446(d) and that, therefore, once a case is removed to federal court, a state court has no jurisdiction to dismiss the state court suit, unless and until the case is remanded. Pacific Spruce Corporation v. City of Yachats, 952 P.2d 575 (Or. App. 1998); Preston v. Allstate Insurance Company, 627 So.2d 1322 ( Fla. Dist. Ct. App. 1993); Sugimoto v. Exportadora De Sal, 284 Cal Rptr. 275 (Cal. Ct. App. 1991). The court in Sugimoto stated:

Thus clearly a dismissal with or without prejudice is a proceeding under section 1446(d). As such the dismissals here are not in accord with federal law and the trial court had no jurisdiction to make such orders. Sugimoto v. Exportadora de Sal, 284 Cal. Rptr. at 277.

Based on the foregoing authority, we find that the state trial court erred in dismissing the Plaintiff's action and assessing costs after the removal had been effected on June 26, 1998. The express statutory language of § 1446(d) and case law from multiple jurisdictions interpreting it compel the conclusion that once the removal is effected, the state court will automatically be divested of authority to proceed further and the federal court will then have the sole authority to take action. The state court cannot proceed further "unless and until the case is remanded." 28 U.S.C. §1446(d). The state court has no authority to dismiss a removed action and tax costs pending disposition of the removal or disposition of the lawsuit by the federal court.

While courts interpreting § 1446(d) have described the effect of removal as a divesting of jurisdiction from the state court, the language of §1446(d) does not include any reference to jurisdiction. It does, however, contain a clear and direct

prohibition against further proceedings by the state court. Thus, the effect of removal can be characterized as an automatic, statutorily-created stay on proceedings in state court. This characterization is helpful in anticipating and avoiding issues which might otherwise arise if the federal court remands a case after determining removal was improper. As the court in Sugimoto observed:

A "dismissal" and a "stay" are not the same. When a court orders a "stay", the action, although dormant, remains pending in that court. Following a "dismissal" the action is no longer pending. And even though the dismissed action can be refiled it must overcome additional procedural obstacles, including but not limited to, applicable statues of limitations.

284 Cal. Rptr. at 277.

The taxing of costs by the state trial court would be appropriate when the case is resolved. Such resolution could occur by determination on the merits by the state court if the federal court remands the case denying removal. Or, the federal court could dispose of the case on the merits. In either situation, the state trial court could then tax costs in the normal fashion.

Because we have reached our decision based on other grounds, we do not find it necessary to address the constitutional issues raised by the Appellant. The trial court's order dismissing this action and taxing costs to the Plaintiff is hereby vacated, and the cause is remanded to the trial court for such further proceedings, if any, as may be necessary and proper.

As a general rule, it is at this point in our opinion that we tax costs. We are not unaware of the paradox which could be perceived in this Court taxing costs where we have ruled that the trial court was without authority to tax costs. However,

this Court has jurisdiction to determine whether the trial court had authority to dismiss this action and tax costs to the Plaintiff and has exercised that jurisdiction at the request of Appellant. Although Appellant should be considered the prevailing party in this appeal, Appellee did not oppose the relief sought by Appellant and granted herein. Further, it would appear that the dismissal of Plaintiff's case and the attendant taxing of costs was done by the trial court on its own initiative without any request by Appellee. This Court is vested with wide discretion in the taxing of costs. Tenn. R. App. P. 40. We have carefully considered the unique posture of this case, as well as the equities involved. Based upon that consideration, we are of the opinion that the costs of appeal should be taxed equally to Appellant and Appellee. However, the costs of the trial court clerk normally included as costs on appeal shall not be taxed to either party.

PATRICIA J. COTTRELL, JUDGE

CONCUR:

BEN H. CANTRELL, PRESIDING JUDGE (M.S.)

WILLIAM C. KOCH, JUDGE